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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

SOUTHERN INYO
HEALTHCARE DISTRICT,

Debtor.

CASE NO. 16-10015 FEC

Chapter 9

DC NO. BH-20

**OBJECTION OF TULARE LOCAL
HEALTHCARE DISTRICT TO DEBTOR'S
SECOND AMENDED DISCLOSURE
STATEMENT FOR PLAN OF
ADJUSTMENT**

Date: February 28, 2018

Time: 1:30 p.m.

Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 11

Judge: Honorable Fredrick E. Clement

Tulare Local Healthcare District, dba Tulare Regional Medical Center ("TRMC") hereby objects ("Objection") to the proposed *Second Amended Disclosure Statement for Plan of Adjustment* ("Disclosure Statement"), filed by the Debtor ("Debtor" or "SIHCD") on January 17, 2018. The Disclosure Statement contains information related to the *Second Amended Plan of Adjustment* ("Plan"), also filed on January 17, 2018.

I.

INTRODUCTION

TRMC, which is also a California healthcare district, objects to the Disclosure

1 Statement because it contains inadequate information about the treatment of creditors
2 and the means for implementation of the Plan. See 11 U.S.C. § 943(b)(7). As a result,
3 until the Disclosure Statement is amended and supplemented, the Plan is not yet ready
4 to circulate to creditors for voting¹. Even assuming the Disclosure Statement could be
5 readied for solicitation, TRMC has serious doubts whether the Plan, as proposed, is
6 confirmable under applicable Chapter 9 standards. TRMC questions the wisdom of
7 expending further scarce funds to pursue confirmation of a Plan that may be opposed
8 and rejected by creditors, especially one entirely dependent upon the vagaries of a
9 public election. Instead, the confirmation process should be slowed to see what the
10 votes do.

11 II.

12 **BASIS OF OBJECTION**

13 TRMC is a debtor in its own Chapter 9 case filed on September 30, 2017
14 bearing case number 17-13797.

15 TRMC and SIHCD were both managed by Healthcare Conglomerate
16 Associates, LLC ("HCCA") and represented by same law firm.

17 Shortly after TRMC filed its Chapter 9 case it sought an order rejecting a
18 Management Services Agreement and other executory contracts with HCCA which was
19 granted on November 1, 2017.

20 On October 17, 2017 counsel for SIHCD² alerted this Court that SIHCD was
21 concerned about transfer of assets of SIHCD to TRMC and TRMC may owe SIHCD
22 \$418,000.

23 Prior to receipt of the declaration of counsel, TRMC was generally unaware of
24 dealings between SIHCD and TRMC and TRMC was not being kept fully informed by
25 HCCA nor its own counsel.

26 Immediately after being apprised that HCCA had transferred TRMC's money,

27 ¹ TRMC has other objections and concerns about the overall adequacy of the Disclosure Statement, particularly
28 related to the proposed treatment of post-petition claims and administrative expense claims, but has narrowed its
Objection to the key issues contained herein.

² Counsel for SIHCD was also counsel for TRMC as well as counsel for HCCA and related entities.

1 supplies and equipment ("Transfers") to SIHCD, TRMC sought to determine what had
2 transpired. Were these unlawful gifts of public money? Had there been some loan
3 agreement between the healthcare districts? How had these Transfers been
4 documented? Had the Transfers been authorized? These, and other questions, were
5 subject of investigation, which continues.^{3 4}

6 Accordingly, on November 17, 2017 TRMC filed ECF #355 asserting an
7 Administrative Expense Claim against SIHCD asserting a claim for \$2,500,000+ on
8 account of the Transfers.⁵

9 On December 18, 2017, TRMC issued a subpoena for documents relating to
10 the Transfers. While SIHCD has cooperated and supplied some of the requested
11 documents on a "rolling basis" it is clear that not all of the needed documents have yet
12 been produced and the production is slowly continuing.

13 Thus, at the present time TRMC has not yet been able to fully assess the value
14 of the Transfers however it believes itself to be owed significant sums by SIHCD and/or
15 that SIHCD has possession of physical assets belonging to TRMC. Notably, common
16 (former) counsel for common (former) management of both districts is in a horrible
17 conflict position making it cumbersome to exchange production. There are significant
18 legal and factual issues as to what the boards of TRMC and SIHCD were told by
19 former management, if anything. The files are less than helpful.

20 As such, TRMC raises its Objection to the SIHCD Disclosure Statement to
21 preserve its rights. In doing so it must be noted that TRMC does not wish harm to its
22 sister district. However, the Objection is raised to protect the rights and assets of
23 TRMC. TRMC believes the respective claims of the districts can be resolved, or at
24 least narrowed, if there are meaningful communications between the districts, which

25 ³ Further complicating matters, the Tulare County District Attorney has seized records of both TRMC and SIHCD and
26 these records are believed to contain information on these Transfers.

27 ⁴ Counsel for SIHCD previously represented TRMC until terminated in August 2017. TRMC is evaluating its claims
28 for legal malpractice against former counsel. The existence of these claims puts SIHCD's counsel in a very difficult
position. TRMC believes it is necessary that SIHCD employ conflicts counsel so that there can be fruitful exchanges
between the districts. SIHCD used such counsel in responding to SIHCD's motion to reject its executory contract
with HCCA. These conflicts also bear on the entitlement to compensation.

⁵ It is noted that the Plan and Disclosure Statement discusses other Administrative Claims and Post-Petition Claims,
but treats them separately and differently, but without explanation.

1 apparently cannot occur due to SIHCD's counsel's conflicts, hence the need for
2 independent conflicts counsel.

3 III.

4 **SPECIFIC OBJECTIONS**

5 TRMC asserts the following specific objections to the Disclosure Statement.

- 6 1. The law is clear that the Disclosure Statement must clearly and succinctly
7 inform the average creditor what it is going to get, when and what
8 contingencies. TRMC does not believe the Disclosure Statement does this
9 and absent a clear and succinct statement the reader is faced with the
10 impossible test of figuring out what the Plan actually means for it.
- 11 2. There is no mention or discussion of the Transfers, SIHCD's assertion of a
12 claim against TRMC, nor the conflicts of interest between SIHCD's counsel
13 and former management, HCCA, and TRMC, which may bear on approval of
14 the Disclosure Statement and allowance of compensation to counsel.
- 15 3. The Disclosure Statement makes no mention of TRMC anywhere, and the
16 existence of the filed Cost of Administration Expenses of both TRMC and
17 HCCA is not mentioned.⁶
- 18 4. The Disclosure Statement does not classify Post Petition Claims and does
19 not address, distinguish or explain the differences between these claims and
20 administrative claims. This creates ambiguity as to what is actually being
21 proposed.
- 22 5. The Disclosure Statement should disclose the connection of ViF to HCCA
23 and Dr. Benzeevi.
- 24 6. The sources of funding for the litigation against HCCA and affiliates should
25 be disclosed as this bears on the ability to pursue such recoveries.
- 26 7. While feasibility is typically a confirmation issue, cases are legion holding
27 that if the Plan is patently unfeasible it should be killed off at the disclosure
28

⁶ HCCA filed a Request for Payment on January 30, 2018 asserting a right to \$2,524,054.

1 statement stage. Here the Plan is entirely dependent upon an election and
2 until the election is conducted the Plan is entirely unfeasible and the process
3 should be delayed until after the election so all creditors know there is
4 community support of the SIHCD Plan.

- 5 8. Similarly, until the asserted claims of Administrative Expense Claims of
6 HCCA and TRMC are addressed it is impossible to know if the Plan has any
7 chance of being feasible.

8 IV.

9 ARGUMENT

10 Section 1125(b) of the Bankruptcy Code as incorporated by Section 901(a)
11 provides that a disclosure statement must contain "adequate information" --
12 "information of a kind, and in sufficient detail...that would enable a hypothetical investor
13 of the relevant class to make an informed judgment about the plan."

14 The purpose of a disclosure statement "is to give all creditors a source of
15 information which allows them to make an informed choice regarding the approval or
16 rejection of a plan." *In re California Fidelity, Inc.*, 198 B.R. 567, 571 (9th Cir. BAP 1996).
17 Therefore, "[a] proper disclosure statement must clearly and succinctly inform the
18 average unsecured creditor what it is going to get, when it is going to get it, and what
19 contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr.
20 D.N.H. 1991). Emphasis added. A debtor's obligation to file a disclosure statement
21 containing "candid disclosure" is a "pivotal" and "critical step" in a bankruptcy case.
22 *Oneida Motor Freight, Inc., v. United Jersey Bank*, 848 F.2d 414, 417 (3rd Cir. 1988).
23 As noted by the Court of Appeals for the Third Circuit:

24 The importance of full disclosure is underlaid by the reliance
25 placed upon the disclosure statement by the creditors and
26 the court. Given this reliance, we cannot overemphasize the
debtor's obligation to provide sufficient data to satisfy the
Code standard of "adequate information."

27 *Id.* SIHCD bears the burden of proof as to whether the Disclosure Statement contains
28 adequate information.

1 As discussed below, the Disclosure Statement lacks sufficient analysis to enable
2 a creditor to determine if voters will approve a tax increase. In the current political
3 climate this cannot be assumed.

4 The District seeks to disseminate the Plan to creditors based on its belief that
5 there is a high likelihood that the tax increase will be successful. No polling data is
6 supplied to support this hope.

7 The failure to even discuss the conflicts of counsel and disputes with TRMC
8 render the Disclosure Statement inadequate.

9 The absence of discussion of the costs of Administrative Expenses as compared
10 to Post Petition claims serves to mislead creditors as to their rights or prospects for
11 payment.

12 SIHCD does not adequately discuss whether the Plan is in the best interests of
13 creditors as required by Section 943(b)(7). The best interests standard in Chapter 9
14 (unlike a Chapter 11 case which compares the distributions under a plan to a Chapter 7
15 liquidation alternative), generally requires that SIHCD demonstrate that the Plan
16 provides a superior outcome for creditors than the dismissal of the case. *In re Mount*
17 *Carbon Metropolitan Dist.*, 242 B.R. 18, 35 (Bankr. D. Co. 1999) ("The 'best interests'
18 requirement of §943(b)(7) is generally regarded as requiring that a proposed plan
19 *provide a better alternative for creditors than what they already have*. This is often
20 easy to establish. Since creditors cannot propose a plan; cannot convert to Chapter 7;
21 cannot have a trustee appointed; and cannot force sale of municipal assets under state
22 law, their only alternative to a debtor's plan is dismissal."). "However, since the test is
23 designed to protect the dissenting minority of a class that has accepted the plan, one
24 must not be so carried away with the potentially adverse consequences of the
25 alternative to a chapter 9 plan that one reaches the conclusion that *any* plan is better
26 than the alternative. A plan that makes little or no effort to repay creditors over a
27 reasonable period of time may not be in the best interest of creditors." 6 *Collier on*
28 *Bankruptcy* ¶ 943.03[7][a], at 943-31 (15th 19 rev. ed. 2004).

V.

CONCLUSION

The Disclosure Statement contains several omissions and inadequacies that must be corrected before it can be disseminated to creditors. The court should direct SIHCD to revise the Disclosure Statement once the election is actually held.

For the foregoing reasons, TRMC requests that the Court deny the approval of the Disclosure Statement or condition it on further and clearer disclosures.

Dated: February 14, 2018

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